

Insolvency Act

thrown into jail as a result of an action by the Farm Survival Association at a sheriff's sale of one of the members of the Association. There was an attempt to stop the sale to make it possible for the bankrupt farmer to continue to negotiate an accommodation with his bank. Subsequently some of the leaders of that group ended up in jail. What they asked for and what Bill C-653 was asking for was a method of allowing the debtor to be represented and have his side of the case heard.

At the moment, as you are aware, Mr. Speaker, the creditor, the banker in most cases, can move in and seize property. Because of the amount of the assets and the financial situation a farmer might be in, it is very difficult for him to hire adequate legal protection. In fact, it is very difficult to get a fair hearing in this kind of situation. Bill C-653 referred to an old law emanating from the 1930s which had provided some protection to farmers in particular. It empowered them to set up tribunals, which meant that one party would represent the bank and another party would represent the farmer. They would agree on a third party to be the chairman and the case would be dealt with in a reasonable manner. They then decided whether or not to convince the bank to consolidate the debt. The tribunal even had the power in some cases to reduce the debt so that it was possible to keep the individual on his farm.

I understand Bill C-17 does have some recognition of the impact that a bankruptcy will have on the community, as did Bill C-12. It only recognizes that impact on those cases where the bankruptcy involves more than \$1 million in assets. There has been some mention of that in the House today. It seems to us and to me, after having gone through the process of hearing witnesses in the subcommittee on agriculture which looked into this problem, that that is really not adequate. When you are dealing with a farming community, the economic base of that community is not all that large. Even one family makes quite a difference to the viability of a community. From the testimony given by witnesses we heard, it was my feeling and I think the feeling of many other people that the powers of the lending institutions, the banks, are being abused. The sheriff is called in, property is seized and assets are taken away. These things are being done under circumstances which one would think should not be allowed in a democratic country like Canada.

One of the first people who appeared before us was from eastern Canada. He had established some 750 acres of woodlot and he had a blueberry business. He was selling maple syrup, hardwood, and harvesting blueberries. He had a relatively small loan at the bank considering the amount of acreage he held. He had run into some difficulty getting equipment in place for the maple syrup part of the operation. He admits he was about eight or nine months behind the schedule he had set for himself at the bank. He was in the process of negotiating to continue the loans through a lawyer, accountants and the bank, only to find when he arrived home at noon that day, the day when the negotiations had been taking place, that the sheriff and five or six large trucks were in the yard loading equipment. They had taken the locks off the buildings and

were loading a lot of the equipment which had not even been assembled. In the process of cleaning up all of the equipment, they had taken not only the farmer's equipment and any implements that were lying around, but also about \$10,000 worth of his neighbour's equipment that happened to be sitting in the yard. There was no accounting of the equipment taken. There was no inventory of what was seized. There was no accounting after the equipment was sold as to what was available, where the equipment had gone, what the prices were, and how it had been sold.

● (1710)

By his own estimate and by the bank's estimate, the equipment taken was worth somewhere in the neighbourhood of \$50,000. By the time the process had been completed, there was approximately \$22,300 gross from the sale of the equipment as a result of the method chosen by the receiver, of which \$9,100 was considered to be selling costs. In addition to that \$9,100, the farmer had to spend in the neighbourhood of \$600 in legal fees, time and transportation charges to recover the \$10,000 worth of assets which truly belonged to his neighbour.

All this was done under a current section of the Bank Act, Section 128, after the bank had changed the loan. It had begun as a fixed-interest rate loan and was changed at the bank's initiative, without the knowledge of the borrower, to a floating-rate loan which cost in the neighbourhood of \$30,000 extra in interest, according to the witness we heard. We received a recommendation from the witness that in all cases there should be an agreement on the part of the borrower and the lender if a loan is to be changed from a fixed rate to a floating rate. I realize that this is not strictly relevant to the Bankruptcy Act, but it does explain how some of these problems come about.

Also he suggested that the bank should not be allowed to debit overdue payments from one account to another account, because this eventually ended up in some cheques being returned NSF. He was as surprised as anyone when that happened. It spoiled his image in the business community with which he has to work. The contract with the bank changed without his knowing it. Most of all, he urged that when dealing with this kind of legislation, the bank should not be able to move unannounced on to a piece of property and seize the assets even though there is the strength of Section 128.

We are hoping for a section of the Bankruptcy Act which would permit farmers and fishermen to have the same options open to them as those of creditors who owe in excess of \$1 million, so that some of these extreme situations will be avoided. In the particular case which I mentioned, the bank did not benefit; it did not recover its funds. It put the man virtually out of business. He retained his land, which was under a different lending institution, but the bank continued to send him notices that he owed more money. It continued to charge interest on the amount of money it did not recover from the unfortunate seizure and sale of his assets at a time when the market was bound to be low. It was off-season. Who would be interested in purchasing maple syrup equipment in the